IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 54 of 2000

Devanand Baburao Sanap ... Appellant

(Orig. Accused no.1)

V/s

The State of Maharashtra .. Respondent

Shri A.P.Mundargi i/b Shri K.S.Patil for the Appellant

Smt.V.R.Bhosale,APP for the State

CORAM:S.B.MHASE AND

S.R.SATHE,JJ.

DATED: 13th June 2005

ORAL JUDGMENT : (Per S.R.Sathe,J.).

1. The Appellant original accused no.1 has preferred this appeal against the judgment and order passed by the Court of Additional Sessions Judge, Solapur in Sessions Case NO.103 of 1999, whereby the accused no.1 was convicted for the offence punishable under Section 302 of IPC and was sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- in default to suffer R.I. for 6 months.

2. The brief facts giving rise of this appeal are as under :-

. The marriage of accused no.1 and Rukmini (deceased in the instant case) had taken place with Janabai about 5/6 years prior to the incident. It was second marriage of the accused. Out of the said wedlock he had 2 sons viz. Amit and Nitin. However, thereafter dispute arose between him and his first wife and as a result of the same there was litigation and ultimately the first wife filed Criminal Application No.153 of 1995 for maintenance and it was granted. Thereafter accused performed second marriage with Rukmini. Out of the said wedlock Rukmini has 2 daughter. However, father of the accused had not approved the marriage of accused and Rukmini. It is alleged that on that count Rukmini was harassed by the accused no.1 at the instance of his father.

3. On 4-4-1999 there was a dispute between accused no.1 and Rukmini and as a result of the same he drove Rukmini out of the house. He even threw the suitcase of Rukmini out of room. As accused did not allow Rukmini to come in house, she was constrained to go to her maiden home which was very near from the house of the accused. On the next day morning, i.e. on 5-4-1999 Rukmini returned to her matrimonial home. However, immediately thereafter accused no.1 poured

kerosene on her person and she was set on fire. As a result of same she sustained burn injuries and started shouting and went out of the house. Hearing the hue and cry, the father and brother of Rukmini who were residing very near from the said place reached there and they extinguished the fire and ultimately she was taken to Primary Health Centre at Karmala. When Police were informed about the said incident, API Murlidhar Mulik, went to Primary Health Centre, Karmala and recorded the statement of Rukmini. On the basis of the said statement Police registered CR No.45 of 1999 against the accused for the offence punishable under Section 498-A, 307 read with 34 of IPC against the present Appellant accused as well as his mother i.e. accused no.2 and sister in law Malan i.e. original accused no.3. The police then immediately gave information to Nayab Tahasildar who went to Karmala Cottage Hospital and also recorded the dying declaration. Considering the injuries sustained by Rukmini,and as per the advice she was removed to Civil Hospital, Solapur. On reaching Civil Hospital, Solapur, her dying declaration was recorded by Santoshsing Pawar, the Special Executive Magistrate. Rukmini, however, succumbed to burn injuries on 10-4-1999. Thereafter Police went to the hospital and drew the Inquest and sent the dead body for postmortem. After recording statements of various witnesses and completing the investigation, police submitted charge-sheet against the accused in the

Court of J.M.F.C., Karamala for the offences punishable under Sections 498, 302 read with 34 of IPC. Finding that the accused are charge sheeted for the offence which is exclusively triable by the Sessions Court, the learned J.M.F.C., Karamala committed the case to Sessions court, Solapur.

4. The learned Additional Sessions Judge, Solapur framed charge Exh.3 against the accused for the offence punishable under Section 302 read with 34 of IPC. The charge was read over and explained to the accused. All the accused pleaded not guilty and claimed to be tried. From the suggestion put to the PWs and statement of the accused recorded under Section 313 of Criminal Procedure Code and the evidence of defence witensses it appears that it is the contention of the accused that at the relevant time the shed in which the deceased and accused were residing caught fire and in that Rukmini sustained injuries. Thus it is suggested that death of Rukmini is accidental.

5. In order to bring home the guilt of the accused, the prosecution has examined in all 8 witnesses consisting of :- PW 1 Nayab Tahasildar and Executive Magistrate Ananda Tukaram Mandlik,Exh.18, PW 2 Santoshsing Mansing Pawar, Special Executive Magistrate, Exh.20, PW 3 Dr.Hemand Nandkishor Lahoti Exh.22, PW 4 Gorakh Rajaram Khade, elder brother of

deceased Exh.23, PW 5 Rajaram Shivram Khade, father of deceased Exh.24, PW 6 Dr.Ajay Bhikaji Shinde, Medical officer, Cottage Hospital, Karmala, Exh.26, who examined injured at Karmala Cottage Hospital, PW 7, Bhimrao Bhagwan Pote, husband of the sister of the deceased, who was then working near the house of accused, and PW 8 Murlidhar Balaji Mulik, APP, Exh.29.

6. After considering the evidence adduced by the prosecution and defence the learned Sessions Judge came to the conclusion that the prosecution has proved beyond reasonable doubt that at the relevant time the accused no.1 poured kerosene on the person of Rukmini and she was set on fire. He therefore convicted and sentenced the present accused as mentioned above.

7. The accused Nos. 2 and 3 were acquitted for want of evidence against them.

8. Being aggrieved by the order of conviction and sentence the original accused no.1 has filed the present appeal.

9. In this appeal before us, Shri Mundargi, learned Advocate for the accused has urged three points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record and has wrongly relied on dying declarations though there were discrepancies in the same. Secondly, he

canvassed before us that learned trial Judge ought to have taken into consideration defence witness, who has stated that accused no.1 tried to extinguish the fire. Lastly, he submitted that at the relevant time the accused no.1 had also sustained some burn injuries and the same were not taken into consideration by the learned Judge. He, therefore, submitted that there is no sufficient evidence against accused no.1 and he be acquitted. In the alternative the learned Advocate submitted that even if it is held that initially the accused poured kerosene on the person of Rukmini and she was set on fire still subsequently he tried to extinguish the fire and as such the offence may not fall under Section 302 of IPC.

10. As against this the learned APP supported the judgment and order passed by the court of Additional Sessions Judge, Solapur.

11. It is not in dispute that on 5-4-1999 when Rukmini was in her matrimonial home she sustained burn injuries and as a result of the same her father and brother had taken her to Cottage Hospital Solapur. It is an admitted fact that thereafter she was removed to Civil Hospital, Solapur and ultimately she died on 10-4-1999 as a result of the said burn injuries. If we see the post mortem report Exh.15 and in particular the cause of death mentioned therein, it is very clear that Rukmini died as a result of 95% burn injuries

sustained by her. So, it is not in dispute that Rukmini died as a result of burn injuries.

12. The main and material question is whether the said death was accidental or homicidal. Answer to this question can be given only after assessing the entire evidence.

13. PW 8 Murlidhar Balaji Mulik, API Exh.29 has stated that on 5-4-1999 when he was at the Police Station he received information that Rukmini has been admitted in the hospital as a result of burn injuries. He therefore went to the said hospital and after ascertaining from the doctor on duty that she is conscious and in a position to give statement, he recorded statement of Rukmini. The statement is produced by him at Exh.30. If we see the said statement we find that therein doctor has clearly made endorsement stating therein that witness was conscious and in a position to give statement. In the statement she has specifically stated that at the relevant time the accused poured kerosene on her person set her on fire. She has also stated that at that time the original accused nos.2 and 3 were also present in the house. The prosecution witness Ananda Tukaram Mandlik Nayab Tahasildar and Executive Magistrate Exh-19, has also stated that when he received the requisition from the Police for recording dying declaration of Rukmini he immediately rushed to the hospital and he met

doctor on duty and when doctor endorsed that injured is in a position to give statement, he recorded dying declaration of Rukmini as per her say. The said dying declaration is produced at Exh.19. It is recorded at 9-25 a.m. From the perusal of this dyeing declaration we find that in this dying declaration also Rukmini has categorically stated that there was quarrel between them and on the day of incident the accused poured kerosene on her person and set her on fire. She has also stated that at that time her mother in law and sister in law were also present in the house. It was tried to be suggested to this witness that at the relevant time Rukmini was not conscious and not in a position to give statement. However, the same is specifically denied by the witness. Similarly, if we see the evidence of prosecution witness no.2 - Santoshsing Mansing Pawar, Special Executive Magistrate, Exh.20, we find that he has also specifically stated that on 8-4-1999 i.e 3 days after the incident he recorded the dying declaration of Rukmini at Civil Hospital,Solapur and at that time also she has stated that the accused no.1 poured kerosene on her person and set her on fire. The evidence of PW 1, Ananda Mandlik, PW 2 Santoshing Pawar and PW 8 Murlidhar Mulik is not at all shaken or shattered in the cross examination. Nothing has been brought in their evidence which would create doubt about their testimony. So far as PW 1 Ananda Mandlik and PW 2 Santoshing Pawar are concerned, they are

admittedly independent witnesses, there is absolutely nothing on record to suggest that they had any special interest in the complainant or that they were having any grudge against the Appellant. So due weightage shall have to be given to their testimony when they have stated that at the relevant time Rukmini was conscious and in a position to give statement and she had accordingly deposed that accused no.1 poured kerosene on her person. A feeble attempt has been made to show that Rukmini had sustained about 95% burn injuries and as a result of the same she was in fact not in a position to give statement. However, besides such vague suggestion, nothing has been brought on record which would indicate that physical or mental condition of Rukmini was such that there was no possibility of Rukmini making such statement before the said witnesses. Much is made about the fact that father of Rukmini had submitted one application wherein he has stated that when first dying declaration of Rukmini was recorded she was unconscious. Firstly, it must be noted that he cannot be considered to be a proper person to say about the exact physical condition of Rukmini. Moreover, when 2 independent doctors as well as 2 other independent persons viz. Nayab Tahasildar and Special Executive Magistrate have stated that at the relevant time Rukmini was conscious there is no reason to give weightage to the testimony of this witness. Moreover, even if the said witness has stated that such

application was given by him and in that he had stated that Rukmini was not conscious when her first dying declaration was recorded, it must be noted that as the said application is not on record no importance can be given to the father's version in that behalf. Naturally, the contents of the same are in fact not considered.

14. Thus, having regard to the evidence of 4 independent witnesses we are not inclined to give much weightage to the stray statement of the father of Rukmini wherein he has said that at the time of first dying declaration Rukmini was not conscious. From the evidence of above mentioned 4 witnesses, it is also very clear that nothing has been brought on record to suggest that proper procedure for recording the dying declaration was not followed by the Special Executive Magistrate or by Nayab Tahasildar. So, under such circumstances due weightage must be given to the dying declaration. It is needless to say that there can be conviction on the basis of dyeing declaration and it is not at all necessary to seek corroboration provided the Court finds that dying declaration is a truthful dying declaration and not vitiated in any manner. In the circumstances, the three three dying declarations mentioned above appeared to be quite truthful and nothing has been brought to suggest that same were given by deceased Rukmini under any pressure or under influence of anyone. Of course, a suggestion has been

made to the prosecution witness that at the relevant time, father and mother of Rukmini had tutored, but it must be noted that immediately after the time the father reached to the house of accused he took the injured to Civil Hospital. So there was in fact no sufficient time to tutor Rukmini. Moreover, if we see the above mentioned three dying declarations viz. Exhs 19, 21 and 30 we find that same are quite consistent. There are no material contradictions in the above three dying declarations. It is true that accused no.2 and 3 have been involved in the above mentioned 3 dying declarations but at the same time we cannot ignore the fact that no specific overact has been attributed to them. All that has been mentioned in the above mentioned three dying declarations is that at the relevant time the mother in law and sister in law of Rukmini were present in the house. If we carefully peruse the above mentioned three dying declarations then we find that material aspect viz. accused no.1 poured kerosene on Rukmini and set her on fire is consistently stated by Rukmini in the above mentioned three dying declarations. The language and sequence of events as well as the words used by Rukmini in the above three dying declarations is some what different but that in fact would indicate that the said three dying declarations are not the outcome of tutoring. So, merely because there are three dying declarations and accused nos.1 and 2 are not specifically involved with regard to any overact it

cannot be said that said three dying declarations are not truthful. On the contrary we find that all three dying declarations are genuine and there is no reason to find fault with them.

15. An attempt was made to show that in the dying declaration exh.19 thumb impression of Rukmini has been obtained. However, in other dying declaration such thumb impression has not been obtained. Merely because of the same we cannot jump to the conclusion that dying declaration is not genuine, we cannot ignore the fact that admittedly she had sustained burn injuries to her thumb and particular officer might have felt that injuries sustained by her were not sufficient so as to not to take her thumb impression while the other might have felt that having regard to the fact that as she has sustained injury to thumb, her thumb impression is not necessary and passed necessary endorsement to that effect on dying declaration. So, merely because of this, it cannot be said that dying declarations on record are not true and genuine.

16. Besides the above mentioned 3 written dying declarations there is oral dying declaration. It has come on record that after the incident, the father and brother of deceased Rukmini had rushed to her house. It is not disputed by the defence. It is but natural that after reaching the spot the father would make

query with his daughter as to how she sustained burn injuries. Father Rajaram Shivram Khade Exh.24 has stated that when he made query with Rukmini, she told him that accused poured kerosene on her person and set her on fire. The evidence of Rajaram Khade in this behalf is not at all shaken or shattered in the cross examination. Nor it has been brought on record that he has made an improvement while deposing.

17. So far as prosecution witness Gorakh Khade, real brother of deceased Exh.76 is concerned, we find that he has also stated that when he reached to the place of offence and made enquiry with the deceased Rukmini she told him that accused poured kerosene on her person and set her on fire. It is true that he has admitted that he has not stated accordingly before Police. So to, that extent there is some improvement in his evidence, but it is quite possible that when he was busy in attending his injured sister he might have forgotten to specifically mention this fact. However this discrepancy would not change the fate of this case.

18. There is another evidence which also supports the prosecution case. Witness no. 7 Bhimrao B. Pote has also stated that on the day of incident he had been to the field of accused to carry out some agricultural operation and at that time he heard hue and cry and as

a result of the same he rushed towards the house and he noticed that Rukmini had sustained burn injuries and at that time she was saying that her husband poured kerosene on her person and set ablaze. The presence of Bhimrao B. Pote at the place of offence is also not disputed. So, we do find that besides the above mentioned three written dying declarations there are oral dying declarations and the same are quite consistent with the written dying declarations. There is no material dispute in all these dying declarations, the same shall have to be accepted.

19. Much is made about the fact that accused had sustained burn injuries to his hand. However, merely because he had sustained such burn injuries we cannot jump to the conclusion that he made genuine attempt to extinguish the fire of Rukmini and he had in fact no intention to kill her. Firstly, it must be noted that though the fact that accused had sustained some minor burn injuries to his hand is admitted if we see the evidence of witness Bhimrao Pote and father of deceased, then it is quite evident that the said injuries were sustained by accused when he tried to extinguish the fire of the shed and not the fire sustained by deceased Rukmini. While considering this aspect one must take into consideration the panchanama of the place of offence Exh.10. If we see the said panchanama we do find that at the relevant time some clothes and portion of the shed, was burnt. At the

relevant time the room in which Rukmini sustained fire was not at all completely burnt but only the shed which is just out of the room was burnt. So, this would also indicate that injuries sustained by accused may have caused while extinguishing the fire of the said shed. Taking advantage of minor burn injuries sustained by him, it is tried to be argued on behalf of defence that accused tried to extinguish the fire of deceased Rukmini and he had no intention to kill her. We are not inclined to accept the defence evidence in this behalf as it does not stand to reasons and there is overwhelming evidence to support prosecution case. So, having regard to all these evidence and circumstances and facts on record, it is very clear that prosecution has proved beyond reasonable doubt that at the relevant time the accused no.1 poured kerosene on Rukmini and set her on fire. The finding recorded by the learned trial Judge in this behalf is legal and correct, There is no reason to find any fault with the same.

20. In this view of the matter, there is no substance in this appeal. The Appeal is dismissed. The order of conviction and sentence passed by Additional Sessions Judge, Solapur is confirmed.

(S.R.SATHE,J.) **(S.B.MHASE, J.)**